

# **City of West Lafayette and Kennedy/Jenks Consultants, Inc.**

## **On-Call Wastewater Engineering Services**

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This Agreement, made and entered into this \_\_\_\_ day of June 2011 by and between the City of West Lafayette, hereinafter referred to as the "CLIENT," and Kennedy/Jenks Consultants, Inc., a California corporation qualified to do business in Indiana, hereinafter referred to as "CONSULTANT". CLIENT and CONSULTANT agree that CONSULTANT will perform the Work identified in Task Order Work Authorizations. The Work covered by this Agreement will be performed in accordance with the Terms and Conditions and Exhibits attached hereto.

### **Recitals**

WHEREAS, CLIENT desires to accomplish engineering services in support of their wastewater system, and

WHEREAS, CONSULTANT represents itself to be qualified and experienced in providing professional engineering and consulting services for such work; and

WHEREAS, CLIENT is desirous of engaging the services of said CONSULTANT to perform the services.

NOW, THEREFORE, CLIENT and CONSULTANT, for the consideration and on the terms hereinafter set forth, mutually agree as follows:

### **Article 1 - Retention**

1. CLIENT hereby retains CONSULTANT to perform professional services described in the Task Order Work Authorizations, the term of such retention shall commence on the date of the execution of this Agreement, unless prior authorization to proceed was provided by CLIENT and accepted by CONSULTANT.
2. CONSULTANT hereby agrees to perform the professional services described and to furnish or procure the use of incidental services, equipment, and facilities necessary for the completion of the services.

### **Article 2 - Scope of Services**

1. The Scope of Work as defined in each Task Order Work Authorization shall become a part of this Agreement.

### **Article 3 - Schedule**

1. The Work shall be performed within the calendar days following Notice to Proceed identified within each Task Order Work Authorization.

### **Article 4 - Compensation**

1. The maximum compensation for the Work shall not exceed the amount identified within each Task Order Work Authorization without prior written authorization from CLIENT. The compensation is inclusive of all costs, expenses, and taxes.
2. Terms of Payment
  - A. CLIENT will be invoiced at the end of the first billing period following commencement of work and at the end of each billing period thereafter. Payment in full of an invoice must be received by CONSULTANT within thirty (30) days of the date of such invoice.
  - B. Compensation and payment for services to be provided on the basis of either (1) a Lump Sum Fee (including Reimbursable Expenses) or (2) a time and expense reimbursement following the Fee Schedule attached hereto as Exhibit 1.
  - C. Failure of CLIENT to make full payment of an invoice so that it is received by CONSULTANT within forty-five (45) days of the date thereof subjects the amount overdue to a delinquent account charge of one percent (1%) of the invoice amount per month, compounded monthly, but not to exceed the maximum rate permitted by law.
  - D. Basis of compensation and budgets for the Scope of Services are presented in each Task Order Work Authorization. These budgets shall not be exceeded without written authorization of the CLIENT. CONSULTANT is not obligated to continue providing services upon expenditure of authorized funding if the increased budget needed to complete the scope of work is not authorized.

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### **Article 5 - Services by CLIENT**

1. CLIENT represents that it has informed CONSULTANT, to the full extent of CLIENT's knowledge, of the location and character of any hazardous materials or unsafe conditions at or under the jobsite, and agrees to immediately advise CONSULTANT of any additional knowledge as to the same gained by CLIENT. Unless advised to the contrary, CONSULTANT shall reasonably rely upon all CLIENT supplied information. Discovery during the performance of the agreement of unanticipated hazardous material or unsafe or other conditions not contemplated by CONSULTANT at the time of the execution of this agreement which materially affect CONSULTANT's ability to perform its specified services or which would materially increase the cost to CONSULTANT of such performance shall constitute a changed condition and both CLIENT and CONSULTANT shall in good faith renegotiate the terms of this agreement to reflect fairly the impact of such changed conditions.
2. CLIENT shall, to the extent reasonable and practicable, assist and cooperate with CONSULTANT in the performance of CONSULTANT's services hereunder. Such assistance and cooperation shall include, but not necessarily be limited to, providing material available from CLIENT's files such as maps, record drawings, property surveys, and operation and maintenance information.
3. CLIENT will provide access to site of work, obtain all permits, provide all legal services in connection with the projects, and provide environmental impact reports and energy assessments unless specifically included in the scope of work in each Task Order Work Authorization. CLIENT shall pay the costs of checking and inspection fees, zoning application fees, soils engineering fees, testing fees, surveying fees, and all other fees, permits, bond premiums, and all other charges not specifically covered by the scope of services.

### **Article 6 - Standard of Care and Compliance with Laws**

1. CONSULTANT's services performed under this agreement will be performed in a manner consistent with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and in the same or similar locality. When the findings and recommendations of CONSULTANT are based on information supplied by CLIENT and others, such findings and recommendations are correct to the best of CONSULTANT's knowledge and belief. No warranty, express or implied, is made or intended by this agreement, or by the foregoing statement of the applicable standard of care, or by providing consulting services or by furnishing oral or written reports of findings made. No entity other than CLIENT or CONSULTANT shall be construed as a beneficiary to this Agreement.
2. CLIENT and CONSULTANT shall each use reasonable care in its efforts to comply with laws, codes, ordinances and regulations in force at the time of the performance by each under this agreement, insofar as such laws are applicable to a party's performance. Unless otherwise provided for in the scope of work of this agreement or by law, the responsibility for making any disclosures or reports to any third party, for notifying all governmental authorities of the discovery of hazardous materials on the jobsite, and for taking corrective, remedial, or mitigative action shall be solely that of CLIENT.

### **Article 7 - Use of Documents**

1. Drawings, reports, writings and other original documents (documents) furnished by CONSULTANT are for the exclusive use of CLIENT and CONSULTANT retains all intellectual property rights including copyrights. Documents are furnished to CLIENT upon CLIENT's specific agreement that it assumes all liability resulting from the further distribution of such documents, or any portion of them, and that CLIENT will indemnify CONSULTANT and hold it harmless against any claims associated with the unauthorized use of such documents. In no event will CLIENT or any person acting on its behalf edit, abridge, or modify any document prepared by CONSULTANT without CONSULTANT's express written consent.

### **Article 8 - Electronic or Magnetic Data**

1. Documents provided by CONSULTANT in electronic or magnetic formats are provided under the following conditions unless detailed otherwise in the scope of work or by a written amendment. Documents are provided in CONSULTANT's standard software formats. CLIENT recognizes that electronic or magnetic data and its transmission can be easily damaged, may not be compatible with CLIENT'S software formats and systems, may develop inaccuracies during conversion or use, and may contain viruses or other destructive programs, and that software and hardware operating systems may become obsolete. As a condition of delivery of electronic or magnetic data, CLIENT agrees to defend indemnify and hold CONSULTANT, its subconsultants, agents and employees harmless from and against all claims, loss, damages, expense and liability arising from or connected with its use, reuse, misuse,

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modification or misinterpretation. In no event shall CONSULTANT be liable for any loss of use, profit or any other damage.

### **Article 9 - Termination**

1. This agreement may be terminated by either party by written notice should the other party fail substantially to perform its obligations under this agreement and continue such default after the expiration of a seven (7) day notice period. Either party may terminate this agreement without necessity of cause upon the expiration of a thirty (30) day notice period. If this agreement is terminated by CLIENT in the absence of default by CONSULTANT, CONSULTANT shall be paid for services performed and costs incurred by it prior to its receipt of notice of termination from CLIENT, including reimbursement for direct expenses due, plus an additional amount, not to exceed ten percent (10%) of charges incurred to the termination notice date, to cover services to orderly close the work and prepare project files and documentation, plus any additional direct expenses incurred by CONSULTANT including but not limited to cancellation fees or charges. CONSULTANT will use reasonable efforts to minimize such additional charges.
2. All charges due and payable under this Article shall be paid by CLIENT within thirty (30) days following submission of a final statement by CONSULTANT.

### **Article 10 - Insurance**

1. CONSULTANT shall maintain worker's compensation insurance as required by applicable state statutes.
2. CONSULTANT shall maintain commercial general liability and automobile liability insurance with limits of not less than \$1 million per occurrence.
3. CONSULTANT shall maintain professional liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from CONSULTANT's performance under this Agreement. The amount of this insurance shall be not less than \$1,000,000 on a claims-made, annual aggregate basis.
4. CONSULTANT may be required to provide CLIENT with certificates of insurance evidencing the aforesaid coverage.
5. CLIENT agrees to include in its contracts with construction contractors provisions requiring that CONSULTANT, in addition to CLIENT, be indemnified against claims and losses occurring during the performance of the contract and be named as an additional insured on liability insurance policies required to be maintained by construction contractor.

### **Article 11 - Indemnification**

1. CONSULTANT agrees to defend, indemnify and hold CLIENT, its officers and employees harmless from any and all claims, damages, losses, or liabilities to the extent caused by the negligent acts, errors, or omissions of CONSULTANT in the performance of services under this Agreement. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist to the parties to this Agreement.

### **Article 12 - Claims and Damages**

1. CLIENT and CONSULTANT represent that they understand the risks associated with the Work and the extent to which those risks should be shared by CLIENT and by CONSULTANT, and have agreed: (a) To the fullest extent permitted by law, CLIENT agrees to limit the liability of CONSULTANT, its officers, employees, and subconsultants to CLIENT, all landowners, contractors, subcontractors, lenders, suppliers, manufacturers, third parties, and their employees such that the total aggregate liability, including all attorneys fees and costs shall not exceed \$50,000.00 or the total fees paid for CONSULTANT's services on this project, whichever is greater. (b) All damages such as loss of use, profits, anticipated profits, and the like losses are consequential damages for which CONSULTANT is not liable. (c) CLIENT shall give written notice to CONSULTANT of any claim of negligent act, error or omission within one (1) year after the completion of the work performed by CONSULTANT. Failure to give notice herein required shall constitute a waiver of said claim by CLIENT.

### **Article 13 - Litigation**

1. Except as specified in this Agreement, CONSULTANT is not obligated to assist CLIENT in its preparation for arbitration, judicial, or administrative proceedings, nor to testify or otherwise to provide evidence on CLIENT's behalf therein.

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### **Article 14 - Assignment: Subcontracting**

1. Neither CLIENT nor CONSULTANT shall assign any of its rights including a right to sue, or delegate its duties under this agreement without the written consent of the other.

### **Article 15 - Force Majeure**

1. Any delay or default in the performance of any obligation of CONSULTANT under this agreement resulting from any cause(s) beyond CONSULTANT's reasonable control shall not be deemed a breach of this agreement. The occurrence of any such event shall suspend the obligations of CONSULTANT as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted.

### **Article 16 - Merger: Waiver: Survival**

1. This agreement and each Task Order Work Authorization constitutes the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations and/or agreements, written or oral. One or more waiver of any term, condition or other provision of this agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision. Any provision hereof which is legally deemed void or unenforceable shall not void this entire agreement and all other provisions shall survive and be enforceable.

### **Article 17 - Confidentiality**

1. CONSULTANT will hold confidential all confidential business or technical information obtained from CLIENT or CLIENT's counsel or generated in the performance of services under this agreement. CONSULTANT will not disclose any of such information without CLIENT's authorization except to the extent required:
  - A. To comply with court order of governmental directive, or
  - B. By CONSULTANT's performance of services rendered under this agreement, or
  - C. To comply with professional standards of conduct for the preservation of public safety and welfare, or
  - D. For CONSULTANT's defense against claims or liabilities arising from its performance of this agreement.
2. The foregoing restriction on disclosure shall not apply to information in the public domain or lawfully acquired on a nonconfidential basis from others.

### **Article 18 - Applicable Law**

1. This agreement shall be interpreted and enforced according to the laws of the State of Indiana. In the case of invalidity or unenforceability of any provision or portion thereof, the provision shall be rewritten and enforced to the maximum extent permitted by law to accomplish as near as possible the intent of the original provision. Nothing herein shall be construed to provide for indemnification against damages arising from a party's gross negligence or willful misconduct.

### **Article 19 - Prevailing Attorney Fees**

1. Notwithstanding any term or condition to the contrary, in the event litigation is commenced to enforce any term or condition of this Agreement, the prevailing party shall be entitled to recover reasonable litigation expenses including reasonable attorney fees.

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IN WITNESS WHEREOF, CLIENT has caused this Agreement to be executed, and CONSULTANT has caused this Agreement to be executed, all as of the day and year first above written.

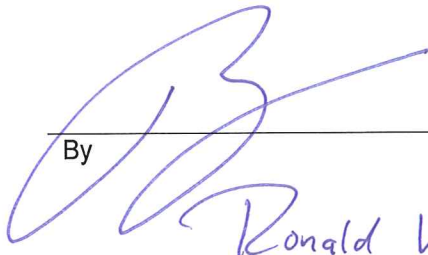
**Accepted:**

**CITY OF WEST LAFAYETTE**  
**"CLIENT"**  
**BOARD OF PUBLIC WORKS AND**  
**SAFETY**

**KENNEDY/JENKS**  
**CONSULTANTS, INC.**  
**"CONSULTANT"**

\_\_\_\_\_  
John R. Dennis, Mayor

By



\_\_\_\_\_  
Sana G. Booker, Member

Printed Name

*Office Manager*

\_\_\_\_\_  
Bradley W. Marley, Member

Title

*01 June 2011*

\_\_\_\_\_  
Jonathan C. Speaker, Member

Date

\_\_\_\_\_  
Elizabeth M. Stull, Member

**ADDRESS FOR GIVING NOTICE:**

Kennedy/Jenks Consultants  
240 Country Club Road, Suite A  
Eugene, OR 97401

**ATTEST:**

\_\_\_\_\_  
Clerk-Treasurer Judith C.  
Rhodes

# City of West Lafayette and Kennedy/Jenks Consultants, Inc.

## Exhibit 1

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**Client/Address:** City of West Lafayette  
500 River Road  
West Lafayette, IN 47906

**Contract/Proposal:** June 1, 2011

## Schedule of Charges

### PERSONNEL COMPENSATION

Classification	Hourly Rate
CAD-Technician .....	\$100
Designer-Senior Technician.....	\$130
Engineer-Scientist-Specialist 2 .....	\$125
Engineer-Scientist-Specialist 3 .....	\$145
Engineer-Scientist-Specialist 4 .....	\$160
Engineer-Scientist-Specialist 5 .....	\$175
Engineer-Scientist-Specialist 6 .....	\$195
Engineer-Scientist-Specialist 7 .....	\$220
Engineer-Scientist-Specialist 8 .....	\$230
Engineer-Scientist-Specialist 9 .....	\$235
Project Administrator .....	\$90
Administrative Assistant.....	\$75
Aide .....	\$60

In addition to the above Hourly Rates, a three percent Communications Surcharge will be added to Personnel Compensation for normal and incidental copies, communications and postage.

### DIRECT EXPENSES

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus ten percent for items such as:

- Maps, photographs, 3rd party reproductions, 3rd party printing, equipment rental, and special supplies related to the work.
- Consultants, soils engineers, surveyors, contractors, and other outside services.
- Rented vehicles, local public transportation and taxis, travel and subsistence.
- Project specific telecommunications and delivery charges.
- Special fees, insurance, permits, and licenses applicable to the work.
- Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for vehicles used in connection with the work will be at the federally approved mileage rates or at a negotiated monthly rate.

Reimbursement for use of computerized drafting systems (CAD), geographical information systems (GIS), and other specialized software and hardware will be at the rate of \$12 per hour.

Rates for professional staff for legal proceedings or as expert witnesses will be at rates one and one-half times the Hourly Rates specified above.

Excise and gross receipts taxes, if any, will be added as a direct expense.

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective June 1, 2011 through December 31, 2011. After December 31, 2011, invoices will reflect the Schedule of Charges currently in effect.